

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Sierra Pacific Power Company

Docket Nos. ER99-28-003
EL99-38-002
ER99-945-002

OPINION NO. 465

OPINION AND ORDER

Issued: August 25, 2003

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Sierra Pacific Power Company

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OPINION AND ORDER

(Issued August 25, 2003)

I. Introduction

1. This Opinion and Order affirms in part, and vacates in part, an initial decision issued in this proceeding on March 22, 2001,¹ concerning two agreements governing the transmission of power over the Alturas Intertie. This order benefits customers by settling entitlement to a new transmission project.

II. Background

2. Power deliveries from the Pacific Northwest to California and Nevada involve two steps. First, power is delivered over the Pacific Northwest AC Intertie (Northwest Intertie) to the California-Oregon Border (COB). Power to California is then transmitted over the California-Oregon Intertie (COI), while power to Nevada is transmitted over the Alturas Intertie. The Alturas Intertie, which began operation on December 21, 1998, allows Sierra Pacific Power Company (Sierra Pacific) to transmit power from Malin, Oregon across the northeast corner of California and into Nevada. The Northwest Intertie has a maximum capacity of 4800 MW, as does the COI, while the Alturas Intertie has a maximum capacity of 300 MW. Thus, the Northwest Intertie has insufficient capacity to support simultaneous deliveries to both the COI and the Alturas Intertie at their respective fully-rated capacities.

¹Sierra Pacific Power Company, 94 FERC ¶ 63,019, errata issued, 94 FERC ¶ 63,021 (2001) (Initial Decision).

3. On October 2, 1998, in Docket No. ER99-28-000, Sierra Pacific filed the Alturas Intertie Project Interconnection and Operation and Maintenance Agreement (Interconnection Agreement) between Sierra Pacific, Bonneville Power Administration (Bonneville), and PacifiCorp. Sierra Pacific explained that the Interconnection Agreement provides for the delineation of ownership of the new facilities constructed as part of the Alturas Intertie, the assignment of responsibility for operation and maintenance of the facilities, and the interconnected operation of the Alturas Intertie.

4. On November 30, 1998, the Commission accepted the Interconnection Agreement for filing, effective December 1, 1998, as requested.² The Commission acknowledged that intervenors had raised "important" issues, decided that "the ongoing discussions between the parties under the [Western Systems Coordinating Council (WSCC)] procedures are the proper forum for resolving them," and directed "the jurisdictional parties to negotiate the appropriate operational procedures."³

5. On January 6, 1999, in Docket No. ER99-945-000, Sierra Pacific filed an Operating and Scheduling Agreement (Scheduling Agreement) between Sierra Pacific, Bonneville, and PacifiCorp. Sierra Pacific explained that the Scheduling Agreement provides for the operation and maintenance of the Alturas Intertie, including, among other things, reliability, voltage control, outage coordination, and switching and electrical limits. The Scheduling Agreement also provides for scheduling of transmission service on the Alturas Intertie and for curtailments to mitigate operation outside of reliability limits.

6. On February 26, 1999, the Commission accepted, suspended, and set for hearing⁴ the Scheduling Agreement. The Commission also, on its own motion, set the Interconnection Agreement for investigation under Section 206 of the Federal Power Act (FPA)⁵ (in Docket No. EL99-38-000). All three dockets were consolidated.⁶

²Sierra Pacific Power Company, 85 FERC ¶ 61,314 (1998) (November 30 Order).

³Id. at 62,235-36.

⁴The Commission held the hearing in abeyance, pending settlement negotiations. However, settlement negotiations, which took place from March 1999 until August 1999, were unsuccessful.

⁵16 U.S.C. § 824e (2000).

⁶Sierra Pacific Power Company, 86 FERC ¶ 61,198 (1999) (Hearing Order). The Commission also denied in part and granted in part requests for rehearing and clarification

(continued...)

7. The Commission recognized that "the mutual agreement on these issues that we anticipated could be reached by the parties apart from formal Commission proceedings has not occurred,"⁷ and stated that, at hearing:

the parties may present evidence on the justness and reasonableness of the terms and conditions of the Scheduling Agreement . . . and the terms and conditions of the Interconnection Agreement, including how the agreements may impact the reliable operation of interconnected transmission systems, including the [Northwest Intertie] and the COI, and the interregional transmission grid's ability to effect power deliveries to customers in both Nevada and California.^[8]

8. On January 11, 2001, the Commission dismissed as moot a request for rehearing of the Hearing Order by Sierra Pacific, who challenged the Commission's determination to set for hearing the issue of whether users of the COI (California Utilities⁹) have a priority of use for the Northwest Intertie.¹⁰ The Commission noted that, in a September 22, 2000 Reply Brief, the California Utilities stated that they "have never suggested that they have a right to priority use of the [Northwest Intertie] based on prior use."¹¹

⁶(...continued)
of the November 30 Order.

⁷Id. at 61,698.

⁸Id. at 61,697.

⁹The California Utilities consist of: Transmission Agency of Northern California (TANC) and its members (including the Cities of Santa Clara and Redding, California, Modesto Irrigation District, and Sacramento Municipal Utility District (SMUD)), M-S-R Public Power Agency, Pacific Gas & Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company.

¹⁰Sierra Pacific Power Company, 94 FERC ¶ 61,033 (2001) (January 11 Order).

¹¹Id. at 61,124, citing California Utilities Reply Brief at 20.

9. On March 19, 2001, the Commission denied motions for clarification of the January 11 Order filed by Bonneville and Sierra Pacific.¹² The Commission disagreed that the January 11 Order had created any uncertainty, reiterating that only the issue of priority of use based on prior use had been dismissed.¹³

III. Initial Decision

10. In the Initial Decision, as explained in more detail below, the presiding judge determined that the Scheduling Agreement and Interconnection Agreement (collectively, Agreements) should be approved.¹⁴

IV. Briefs on and Opposing Exceptions

11. On May 4, 2001, Commission Trial Staff (Trial Staff), the Public Utilities Commission of Nevada (Nevada Commission), Portland General Electric Company (PGE), Truckee Donner Public Utility District, the California Utilities, Sierra Pacific, and Bonneville¹⁵ filed Briefs on Exceptions.

12. On May 15, 2001, the California Utilities filed a motion to reopen the record and modify the Initial Decision. On May 18, 2001, Trial Staff, and on May 30, 2001, Sierra Pacific, filed answers to the California Utilities' motion.

13. On June 8, 2001, Trial Staff, the Nevada Commission, Bonneville, Sierra Pacific, and the California Utilities filed Briefs Opposing Exceptions.

14. On July 26, 2001, TANC and SMUD filed a motion to disregard Section I of Sierra Pacific's Brief Opposing Exceptions, regarding the applicability of Order No. 888,¹⁶ as not

¹²Sierra Pacific Power Company, 94 FERC ¶ 61,318 (2001).

¹³Id. at 62,192.

¹⁴Initial Decision, 94 FERC at 85,148.

¹⁵Bonneville filed a corrected table of authorities on May 7, 2001.

¹⁶Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), order on reh'g, Order No. 888-A, 62 Fed. Reg.

(continued...)

responsive to the California Utilities' exceptions, but rather as continued challenges to the Initial Decision. On August 10, 2001, Sierra Pacific filed an answer to that motion.

15. On July 12, 2002, Sierra Pacific filed a motion to lodge with the Commission the Ninth Circuit's decision in Transmission Agency of Northern California v. Sierra Pacific Power Company.¹⁷ On July 29, 2002, TANC and SMUD filed an answer to that motion. TANC and SMUD do not oppose the motion, but dispute Sierra Pacific's interpretation of the case. On June 16, 2003, Sierra Pacific informed the Commission that the Supreme Court denied TANC's petition for a writ of certiorari of TANC v. Sierra Pacific.

V. Discussion

A. Procedural Matters

16. We will grant TANC and SMUD's motion to disregard that portion of Sierra Pacific's Brief Opposing Exceptions which challenges the presiding judge's determination regarding the applicability of Order No. 888. TANC and SMUD are correct that such challenge belonged in, and was, in fact, appropriately raised in, Sierra Pacific's Brief on Exceptions.¹⁸

17. We will deny the California Utilities' motion to reopen the record. In order to convince the Commission to reopen a record, the movant must demonstrate the existence of extraordinary circumstances that outweigh the need for finality in the administrative process,¹⁹ and the California Utilities have failed to do so. The California Utilities argue that the Commission should "immediately remand the case to the presiding judge with instructions to modify both his findings and his Initial Decision to conform to the new

¹⁶(...continued)

12,274 (March 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), aff'd in relevant part sub nom. Transmission Access Policy Study Group, et al. v. FERC, 225 F.3d 667 (D.C. Cir. 2000), aff'd sub nom. New York v. FERC, 535 U.S. 1 (2002).

¹⁷295 F.3d 918 (9th Cir. 2002) (TANC v. Sierra Pacific).

¹⁸See, e.g., Sierra Pacific Brief on Exceptions at 23-36.

¹⁹See, e.g., East Texas Electric Cooperative, Inc. v. Central and South West Services, Inc., et al., 94 FERC ¶ 61,218 at 61,801 (2001).

material facts which have been established since the hearing record was closed."²⁰ However, the "new material facts" they wish us to consider, i.e., Bonneville's statement in its Brief on Exceptions that it would not be able to obtain an anticipated uprating of the Northwest Intertie, do not warrant a remand. That statement is already before us, in Bonneville's Brief on Exceptions, and the Commission need not order a remand to consider a statement in a Brief on Exceptions.

18. In contrast, we will grant Sierra Pacific's motion to lodge. Considering TANC v. Sierra Pacific, decided after the Initial Decision was issued but before this Opinion and Order is issued, will not adversely affect "the need for finality in the administrative process."

B. Approval of Agreements

Initial Decision

19. The presiding judge enumerated the four issues that the parties presented for hearing: (1) whether the Agreements adversely affect the reliable operation of the Northwest Intertie and/or the COI;²¹ (2) whether the Agreements adversely affect any right to use the Northwest Intertie and/or the COI in the most economical manner, and whether the Commission may enforce any rights or interests affecting use of the Northwest Intertie against participants in the Northwest Intertie or the Alturas Intertie;²² (3) whether the operating procedures in the Agreements are sufficient and/or appropriate;²³ and (4) what relief, if any, would be necessary and appropriate.²⁴ However, he also stated:

I have concluded that limiting my ruling to the stated issues will obfuscate what really is at issue here. Rather than the parties's stated issues, this case is about whether or not the California Utilities will continue to have access to the total 4800 MW capacity available at the COB if the Commission approves the Agreements which precipitated their protest.

²⁰California Utilities Motion to Reopen the Record at 5.

²¹Initial Decision, 94 FERC at 65,120-26.

²²Id. at 65,126-35.

²³Id. at 65,135-39.

²⁴Id. at 65,139-42.

Alternatively, the question may be stated as whether the California Utilities will continue to have access to as much of the 4800 MW available at the COB as they are in a position to take away if the Commission approves the two Agreements which are the subject of these proceedings. Consequently, I am declining to rule on the specific issues delineated by the parties and will address the heart of the parties's dispute as directly as possible.^[25]

20. He further concluded that, because "this case is not about cost, it is about the availability of power," and, as the California Utilities would be able to obtain their full power needs over an alternative, albeit more expensive route, "it appears that the California Utilities will not be adversely impacted by the energization of the Alturas Intertie pursuant to the agreements which are the subject to of [sic] these proceeding and, therefore, it seems that there is no reason why the agreements should not be approved."²⁶ In sum, he ruled in favor of Sierra Pacific and, by recommending approval of the Agreements, effectively allocated up to 300 of the 4800 MW available at the COB to Nevada rather than to California. He also determined that, because of an anticipated uprating of the Northwest Intertie to 5100 MW sometime in 2001, at most times, the California Utilities would be able to take 4800 MW at the same time 300 MW would be available to Sierra Pacific over the Alturas Intertie.²⁷

21. The presiding judge also rejected the California Utilities' claim that, even if after energization of the Alturas Intertie (which, as noted above, has a maximum capacity of 300 MW) when the California Utilities arguably might have access to 300 MW fewer than before energization, "it does not follow that this creates a reliability problem. . . . To carry their burden of proof, the California Utilities would have had to provide studies which demonstrate that they cannot meet their transmission needs because of the energization of the Alturas Intertie, but they did not."²⁸ Additionally, he did "not find the California Utilities's argument analogizing the facts in the scenario present here with loop flow compelling. Loop flow is a reality related to the physics of electricity and has a direct

²⁵Id. at 65,142-43.

²⁶Id. at 65,143.

²⁷Id. He also determined that the Northwest Intertie and the COI, which are separately owned and controlled and subject to separate tariffs, do not constitute a single system. Id. at 65,145, 65,088 n.154.

²⁸Id. at 65,144 (citation omitted).

impact upon interconnected utilities. . . . Here, we are addressing a purely commercial problem involving utilities competing for the same constrained source of power. Thus, the California Utilities's problem is securing an adequate supply.²⁹ He concluded that the California Utilities "seem to want to be able to take as much of the 4800 MW capacity as they want and only when they want it. Providing them with this right would deprive the operators of the [Northwest Intertie] of taking advantage of their ability to sell the full capacity of the [Northwest Intertie] all the time."³⁰

Arguments on and Opposing Exceptions

22. In their Brief on Exceptions, the California Utilities argue that the presiding judge erred in failing to rule on the specific issues before him.³¹ They also maintain that, because the presiding judge found that Sierra Pacific's use of the Alturas Intertie would reduce the California Utilities' ability to schedule up to the full rated capacity of the COI, he should have concluded that the operation was not good utility practice (especially regarding allocation) and, hence, was unreasonable. They explain that, "whether or not the physical carrying capability of the COI facilities is changed by the operation of the Alturas Intertie, the amount of capacity that can actually be used on the COI to import power at the COB is reduced when Alturas Intertie users schedule power."³²

23. The California Utilities also assert that the presiding judge ignored his own conclusion that the "question is whether the operation of the Alturas Intertie diminishes the

²⁹*Id.* at 65,145-46. Moreover, the presiding judge also concluded that Order No. 888 is not dispositive and, in fact, does not go to the real question. Order No. 888 goes to non-discriminatory transmission access, he found, which is not the issue here; this case goes to competition between Sierra Pacific and the California Utilities for "a constrained source of power." *Id.* at 65,146 (emphasis in Initial Decision).

³⁰*Id.* at 65,145.

³¹In addition, Trial Staff, Bonneville, the Nevada Commission, and the California Utilities all argue that various findings of fact, which do not affect the result reached in the Initial Decision, are erroneous. We will not address those objections, however, as our determinations in this Opinion and Order do not rely on those alleged errors.

³²California Utilities Brief on Exceptions at 44 (emphasis in original). They maintain that, due to different scheduling protocols between the California ISO and Bonneville, there is no assurance that the California Utilities would be able to outbid the users of the Alturas Intertie for transmission capacity in the Northwest.

ability of the California Utilities to utilize their systems in the most economical manner,⁶³ and that reliability cannot be entirely divorced from cost. Moreover, they maintain that he erred in concluding that cost is not the issue because, at some point, an alternative can be too expensive to be viable. Additionally, they argue that the presiding judge's definition of reliability erroneously ignores supply adequacy. Finally, they assert that the presiding judge erred in ignoring their arguments that Sierra Pacific misled the WSCC and state regulators, allege that the WSCC rating process was corrupted, and also assert that the presiding judge should have concluded that Sierra Pacific and Bonneville unreasonably excluded the California Utilities from negotiations over operating procedures.

24. On the opposite side, in their Briefs on Exceptions, the Nevada Commission, Sierra Pacific, and Truckee Donner all argue that the presiding judge erred in holding that Order No. 888, especially in its treatment of transmission priorities, is inapplicable to this case. In addition, Bonneville and Sierra Pacific argue that the presiding judge evaluated the Agreements under the wrong standard. For example, Sierra Pacific maintains that the presiding judge improperly treated the filing of the Agreements as an approval process for the Alturas Intertie itself, whereas, under the FPA, the Commission does not have certification authority over transmission facilities.

25. In response, in their Brief Opposing Exceptions, the California Utilities argue that placing limitations on Sierra Pacific's use of the Alturas Intertie would not implicate or violate Order No. 888, as the Agreements were not appended to the Order No. 888 filings of any party. Thus, the California Utilities argue that firm use of the Alturas Intertie should be limited to the amount of transmission capacity that intertie added to the Pacific Northwest; any additional use should be non-firm. They also maintain that the presiding judge correctly found that an upgrade of the Alturas Intertie would "interfere with the California Utilities' use of their systems,"⁶⁴ and from this they extrapolate that, the fact that the Northwest Intertie did not receive the anticipated uprating to 5100 MW, means that even Sierra Pacific's 300 MW use of the Alturas Intertie is not just and reasonable.

26. In contrast, in their Briefs Opposing Exceptions, Trial Staff, Bonneville, the Nevada Commission, and Sierra Pacific all argue that the Agreements do not impair reliability³⁵ or

³³Id. at 73, citing 94 FERC at 65,143 (emphasis added by California Utilities).

³⁴California Utilities Brief Opposing Exceptions at 3.

³⁵These parties also argue that the process for the WSCC reliability finding was neither tainted nor an issue in this proceeding. Additionally, Trial Staff argues that, even if the California Utilities had been excluded from the negotiations (which Bonneville

interfere with the California Utilities' use of their facilities in the most economical manner.³⁶ These parties also argue that the Agreements comport with good utility practice; Bonneville further asserts that good utility practice does not confer transmission rights on another party's transmission facilities. They all agree that use of the Alturas Intertie does not impair any ownership interests in the COI, as the Alturas Intertie and the COI do not constitute a single system, and power scheduled on the Alturas Intertie does not flow on the COI. Additionally, they maintain that no contractual rights were violated. Trial Staff further points out that the California Utilities, which bear the burden of proof, do not point to any factual findings which support: (1) a specific objection to the Agreements; (2) any actual power interruption, or (3) a dollar amount of harm.

Commission Conclusion

27. We will affirm the presiding judge's determination that the Agreements are just and reasonable.³⁷ Thus, Sierra Pacific may make use of the full 300 MW of the Alturas Intertie.

28. We cannot find on the record before us that the Agreements impair the reliability of the California Utilities' transmission systems; as the presiding judge pointed out, they provided no record evidence supporting such impairment. Moreover, the California Utilities' reliability argument really amounts to a claim that they have an absolute right to transmit power from Bonneville. As the Nevada Commission aptly states, "this Commission has never held that the fact that a utility may be forced to obtain supplies from

³⁵(...continued)

disputes), that issue was not set for hearing.

Trial Staff, Bonneville, and Sierra Pacific also dispute the California Utilities's assertion that Sierra Pacific misled state regulators. As Trial Staff points out, none of the relevant state regulators agrees with that accusation.

³⁶For example, the Nevada Commission states that "the California Utilities seem to be claiming a perpetual right to use the COI in the way in which they have historically used those facilities." Nevada Commission Brief Opposing Exceptions at 23.

³⁷Despite the assertion by the California Utilities that the presiding judge failed to rule on the issues before him, we note that the Initial Decision does address the matters provided for by the Hearing Order, i.e., whether the Agreements are just and reasonable, their impact on the reliable operation of interconnected systems, and/or the parties' rights to use interconnected systems. See 86 FERC at 61,699.

sources other than its 'first choice' amounts to a reliability concern.⁶⁸ This is especially true here, where the California Utilities have declined to contract for the full, firm transmission capacity they desire, i.e., to sign contracts to lock up the transmission of Bonneville power, and where, we also note, California has no preference rights to such power under the Pacific Northwest Electric Power Planning and Conservation Act³⁹ or any other statutes.

29. We similarly find unconvincing the California Utilities' argument that the Agreements impede the most economical use of their transmission systems. The California Utilities, in essence, are imputing a perpetual right to continue their previous usage of the Northwest Intertie, without their needing to purchase that full, firm capacity, an argument at odds with the California Utilities' statement in their September 22, 2000 Reply Brief, quoted above, that they "have never suggested that they have a right to priority use of the [Northwest Intertie] based on prior use."⁴⁰

30. We also disagree with the California Utilities' argument that the Agreements violate good utility practice. Good utility practice does not impute an absolute right by users of the separate COI to schedule up to the full rated capacity of the Northwest Intertie. In addition, the California Utilities are incorrect in asserting that the Hearing Order "established an inquiry into whether the [Agreements] comport with WSCC standards,"⁴¹ and their challenge to the procedure used to obtain the WSCC rating, as noted by the presiding judge, is not appropriately raised in this forum.⁴²

31. Finally, we disagree with the California Utilities' assertion that Bonneville's failure to receive an expected uprating of the Northwest Intertie (from 4800 MW to 5100 MW – which would then allow 4800 MW to be allocated to the COI and 300 MW to the Alturas

³⁸Nevada Commission Brief Opposing Exceptions at 40.

³⁹16 U.S.C. §§ 839-839h (2000).

⁴⁰See supra note 11.

We also note that, to the extent Order No. 888 is relevant to this dispute, our determination here that the Agreements are just and reasonable is consistent with the Order No. 888 policy that firm transactions have priority over non-firm. See Order No. 888, FERC Stats. & Regs. at 31,744-48.

⁴¹California Utilities Brief on Exceptions at 32.

⁴²See Initial Decision, 94 FERC at 65,144 n.331.

Intertie) affects the presiding judge's underlying determinations. While it is true that the presiding judge assumed in his "easy answer" that the uprating would occur, his "more complicated answer" expressly acknowledged that "it may be that not doing so [*i.e.*, not uprating the Northwest Intertie] runs the risk that California, at times, will be short of power."⁴³ The presiding judge went on to explain:

[T]he record reflects that, for various reasons, the COI cannot always accept 4800 MW from the [Northwest Intertie]. Rather, the record establishes that, during the Summer peak season, the COI may only be able to accept 4300 MW at the COB and certainly no more than 4500 MW. Thus, even if 300 megawatts are routed to the Alturas Intertie from the COB, there will be very few instances in which the California Utilities could not maximize their take from the COB with power routed south to the COB on the [Northwest Intertie]. In those few instances when they cannot, they may have to route power through Idaho and Nevada and north on the Alturas Intertie to the COB. While this might result in a higher cost to them than if the same amount of power had traveled on the

⁴³In this regard, he stated that:

The first question which must be addressed is whether the energization for the Alturas Intertie will have any impact on the operation of the COI. There should be no question in anyone's mind that, barring the [Northwest Intertie] receiving a 5100 MW rating, theoretically, at least, it would. That is, assuming that only 4800 MW can flow on the [Northwest Intertie], and assuming that the COI can take all 4800 MW, and assuming that the California parties need all of the 4800 MW, then any megawatts which flow onto the Alturas Intertie will reduce the megawatts which the COI can take.

Id. at 65,143-44 (citation omitted).

We note that the fact that the presiding judge contemplated that the uprating might not occur is a further reason to deny the California Utilities' motion to reopen the record.

[Northwest Intertie], this case is not about cost, its about the availability of power.^[44]

32. In sum, the presiding judge concluded that the Agreements are just and reasonable. We concur with that conclusion.

C. Future Expansion

Initial Decision

33. The presiding judge noted that the problem of load growth in the Western Interconnection, with constrained power flow from north to south, is not limited to this dispute. He, therefore, determined, that:

Under these circumstances, it appears, a simple resolution of the dispute between the California Utilities and Sierra Pacific will not solve the problem of which their dispute is only symptomatic. Rather, the only solution to their current problem, and any future problems, is for all parties in interest in the Western Interconnection mutually to agree to coordinate generation and transmission services throughout the region so that the needs of all portions of the region will be met.

. . .

In order to accomplish this, before even the power plants and the transmission lines can be built, it may be necessary to create a regional organization empowered to make the appropriate decisions as to how much power is needed, where that power is needed, and how to deliver that power to where it is needed. All affected states should be represented on the organization to avoid seam issues which would be similar to, if not the same as, the problems presented here. . . .

. . .

⁴⁴Initial Decision, 94 FERC at 65,143 (citations omitted).

One of the concerns of the California Utilities affected by this general lack of generation and transmission capacity in the Western Interconnection is their fear that Sierra Pacific will exacerbate the situation by upgrading the rating of the Alturas Intertie [from 300 MW] to 600 MW. The record reflects that this can be accomplished. Moreover, while it appears that Sierra Pacific has not taken any action to upgrade the Intertie as of the June 2000 hearing, the record reflects that it has conducted preliminary studies. It is not too farfetched, therefore, to conclude that Sierra Pacific is not unprepared expeditiously to begin moving towards an upgrade of the facility. Recent events in the West has convinced me that such an action would be imprudent and would result in increasing unjust and unreasonable pricing throughout the Western Interconnection marketplace. Therefore, I am compelled to limit the Alturas Intertie to operating at 300 megawatts unless and until an upgrade is approved as part of the regional generation/transmission program described above.^[45]

Arguments on and Opposing Exceptions

34. In their Briefs on Exceptions, Trial Staff, Bonneville, the Nevada Commission, Sierra Pacific, PGE, and Truckee Donner all protest the presiding judge's attempt to preclude expansion of the Alturas Intertie "except as part of a coordinated plan to provide sufficient generation and transmission services as will meet the needs of every portion of the Western Interconnection."⁴⁶ Bonneville and the Nevada Commission argue that any limitation on expansion of the Alturas Intertie is beyond the scope of what the Commission set for hearing, and Trial Staff, Bonneville, the Nevada Commission, Sierra Pacific, and PGE argue this determination is not based on the record. Trial Staff and Sierra Pacific also argue that the limitation is speculative and too broad.⁴⁷ Bonneville, the Nevada Commission, Sierra Pacific, PGE, and Truckee Donner argue that the presiding judge's determination is inconsistent with the open access objectives of Order No. 888 and other

⁴⁵Initial Decision, 94 FERC at 65,147-48 (footnotes and citations omitted).

⁴⁶Id. at 65,149.

⁴⁷Instead, Trial Staff argues, the Commission should establish a mechanism by which it can evaluate any future upgrades if and when they are planned. Trial Staff Brief on Exceptions at 7.

Commission orders, that encourage the expansion of transmission systems in response to market needs, as well as with the Commission policy of encouraging interconnections.

35. In contrast, in their Brief Opposing Exceptions, the California Utilities argue that the limitation on future expansion of the Alturas Intertie is necessary because the record supports a finding that mitigation is required for even the current operation of the Alturas Intertie. The California Utilities maintain that, absent such a restriction on Sierra Pacific's use of the Alturas Intertie, the Agreements would not be just and reasonable.

Commission Conclusion

36. We agree with those parties who argue that the presiding judge's determination to limit the Alturas Intertie to operating at 300 MW unless and until an upgrade is approved as part of a regional generation/transmission program is beyond the scope of what we set for hearing. We will, therefore, vacate that portion of the Initial Decision. While we fully agree with the presiding judge's encouragement of regional coordination and negotiated solutions to regional problems, we did not set the issue of upgrades to the Alturas Intertie for hearing.

The Commission orders:

(A) The Initial Decision is hereby affirmed in part and vacated in part, as discussed in the body of this Opinion and Order.

(B) TANC and SMUD's motion to disregard is hereby granted.

(C) The California Utilities' motion to reopen the record is hereby denied.

(D) Sierra Pacific's motion to lodge is hereby granted.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.